

BOBBY JINDAL  
GOVERNOR



PEGGY M. HATCH  
SECRETARY

**State of Louisiana**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE

September 18, 2012

CERTIFIED MAIL (7004 2510 0006 3853 7412)  
RETURN RECEIPT REQUESTED

**STOLTHAVEN NEW ORLEANS, L.L.C**  
c/o S. Ault Hootsell, III  
Agent for Service of Process  
365 Canal Street, Suite 2000  
New Orleans, LA 70130

**RE: PENALTY ASSESSMENT**  
**ENFORCEMENT TRACKING NO. MM-P-12-01010**  
**AGENCY INTEREST NO. 87738**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **PENALTY ASSESSMENT** is hereby served on **STOLTHAVEN NEW ORLEANS, L.L.C. (RESPONDENT)** for the violation(s) described therein.

Any questions concerning this action should be directed to Wayne R. Slater at (225) 219-3729.

Sincerely,

A handwritten signature in black ink, appearing to read "Celena J. Cage".

Celena J. Cage  
Administrator

Enforcement Division

CJC/CJC/wrs  
Alt ID No. LA0114405  
Attachment

c: Stolthaven New Orleans, L.L.C.  
2444 English Turn Road  
Braithwaite, LA 70040

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF**

**STOLTHAVEN NEW ORLEANS, L.L.C.  
PLAQUEMINES PARISH  
ALT ID NO. LA0114405**

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**ENFORCEMENT TRACKING NO.**

**MM-P-12-01010**

**AGENCY INTEREST NO.**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT,  
La. R.S. 30:2001, ET SEQ.**

**87738**

**PENALTY ASSESSMENT**

The following **PENALTY ASSESSMENT** is issued to **STOLTHAVEN NEW ORLEANS, L.L.C. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(E) and 30:2050.3.

**FINDINGS OF FACT**

**I.**

The Respondent owns and/or operates Stolthaven New Orleans-Braithwaite Terminal (the site), a petro/chemical bulk liquid storage and transfer terminal, and centralize waste treatment facility, located at 2444 English Turn Road in Braithwaite, Plaquemines Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0114405 with an effective date of July 1, 2007, and an expiration date of June 30, 2012. The Respondent submitted a timely permit renewal application on or about December 11, 2011, and LPDES permit LA0114405 has been administratively continued. Under the terms and condition of LPDES permit LA0114405, the Respondent is authorized to discharge

treated wastewater from Outfalls 001, 002, 003, and 005 directly to the Mississippi River and from Outfalls 005-012 to the Braithwaite Canal via local drainage, all waters of the state.

## II.

On or about September 4, 2012, a file review of the Stolthaven New Orleans LLC - SHVNN Facility, owned and/or operated by **STOLTHAVEN NEW ORLEANS, L.L.C. (RESPONDENT)**, was performed by the Department to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Water Quality Regulations. While the investigation by the Department is not yet complete, the following violation was noted during the course of the file review:

The Respondent failed to timely notify the Department within one (1) hour of the unauthorized discharge of 1-Octene and Methyl acrylate that caused an emergency condition. Specifically, the Respondent became aware of the unauthorized discharge and/or emergency condition on or about August 30, 2012, but did not notify the Department until September 1, 2012. Each failure to immediately notify the Department of an unauthorized release that caused an emergency condition is a violation of La R.S. 30:2076(A)(3) and LAC 33:I.3915.A.1.

## III.

On September 4, 2012, the Department issued a Notice of Potential Penalty (NOPP), Enforcement Tracking No. MM-PP-12-00985 to the Respondent for the violation contained in paragraph II above.

## IV.

A civil penalty under Section 2025(E) and 2050.3 of the Act may be assessed for the violations described herein.



V.

Having considered the factors set forth in Section 2025(E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable, and justified.

**ASSESSMENT**

I.

A penalty in the amount of **\$12,189.61** is hereby assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

**THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:**

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **PENALTY ASSESSMENT**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **PENALTY ASSESSMENT**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **PENALTY ASSESSMENT** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality  
Office of the Secretary  
Post Office Box 4302  
Baton Rouge, Louisiana 70821-4302  
**Attn: Hearings Clerk, Legal Division**  
**Re: Enforcement Tracking No. MM-P-12-01010**  
**Agency Interest No. 87738**

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **PENALTY ASSESSMENT** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **PENALTY ASSESSMENT** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **PENALTY ASSESSMENT** shall become a final enforcement action unless the request for a hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violations described herein and the assessed penalty.

V.

The Respondent must make full payment of the civil penalty assessed herein no later than fifteen (15) days after the assessment becomes final. Penalties are to be made payable to the Department of Environmental Quality, and mailed to:

Department of Environmental Quality  
Office of Management and Finance  
Post Office Box 4303  
Baton Rouge, Louisiana 70821-4303  
**Attn: Lacey Vitteri, Accountant**  
**Re: Enforcement Tracking No. MM-P-12-01010**  
**Agency Interest No. 87738**

Enclose with your payment the attached Penalty Payment form.

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VI.

Upon the penalty assessed herein becoming final because of the Respondent's failure to timely file a request for a hearing, and upon the Respondent's failure to pay the civil penalty provided herein or failure to make arrangements satisfactory to the Department for such payment, this matter shall be referred to the Attorney General for collection of the penalty plus all costs associated with the collection.

VII.

For each violation described herein, the Department reserves the right to seek compliance with its rules and regulations in any manner allowed by law and nothing herein shall be construed to preclude the right to seek such compliance.

VIII.

This **PENALTY ASSESSMENT** is effective upon receipt.

Baton Rouge, Louisiana, this 18 day of September, 2012.



Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
P.O. Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Wayne R. Slater

# PENALTY PAYMENT FORM

Please attach this form to your penalty payment  
and submit to:

Department of Environmental Quality  
Office of Management and Finance  
P. O. Box 4303  
Baton Rouge, Louisiana 70821-4303  
Attn: Lacey Vitteri, Accountant

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**Respondent: Stolthaven New Orleans, L.L.C.**

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**Enforcement Tracking Number: MM-P-12-01010**

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**Penalty Amount: \$12,189.61**

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**AI Number: 87738**

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**Alternate ID Number: LA0114405**

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**TEMPO Activity Number:**

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**For Official Use Only.  
Do Not write in this Section.**

**Check Number:**

**Check Date:**

**Check Amount:**

**Received Date:**

**PIV Number:**

**PIV Date:**

**Stamp "Paid" in the box to the right  
and initial.**

**Route Completed form to:**

**Cheryl Sonnier Nolan  
Assistant Secretary  
Office of Environmental Compliance**



## PENALTY CALCULATION WORKSHEET

### Penalty Event No. 1 – Failure to timely notify the Department (MM-PP-12-00985)

The Respondent failed to timely notify the Department within one (1) hour of the unauthorized discharge of 1-Octene and Methyl Acrylate that caused an emergency condition. Specifically, the Respondent became aware of the unauthorized discharge and/or emergency condition on or about August 30, 2012, but did not notify the Department until September 1, 2012. Each failure to immediately notify the Department of an unauthorized release that caused an emergency condition is a violation of La R.S. 30:2076(A)(3) and LAC 33:I.3915.A.1.

#### Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: **MODERATE**

Justification: The degree of risk to human health or property is considered Moderate due to the fact that pollutants associated with the unauthorized discharge have the potential for measureable detrimental impact on the environment or public health. The Respondent's untimely reporting delayed the Department and other responding agencies from taking measures to immediately deploy resources and/or require the Respondent to take immediate measures to investigate the unauthorized discharge and to evaluate the condition of the facility to determine any impact to human health and/or the environment.

Nature and Gravity of the Violation: **MAJOR**

Justification: The nature and gravity of the violation is considered Major due to the fact that the Respondent deviated significantly from the requirement to notify the Department within one (1) hour of becoming aware of an emergency condition. The Respondent entered the site on August 30, 2012, and was aware that there had been releases of 1-Octene and Methyl Acrylate. However, the Respondent did not make notification to the Department and other applicable regulatory agencies until September 1, 2012.

#### Violator Specific Factors

Adjustment Factors (Violator-Specific) Per Event-the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

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1. The history of previous violations or repeated noncompliance.

Adjustment = 50%

Justification: The Department has issued several enforcement actions (i.e., AE-PP-05-0148, AE-PP-05-0148A, MM-CN-08-0050, MM-CN-08-0050A and HE-PP-07-0625) to the Respondent for several alleged violations of the air quality, water quality and hazardous waste regulations. The enforcement actions were subsequently resolved by the Department and the Respondent in Settlement Agreement SA-MM-11-0008, which was finalized by the Department on August 25, 2011. The Settlement Agreement allows the Department to consider the inspection report(s), aforementioned enforcement actions and the Settlement Agreement for the purpose of determining compliance history.



Additionally, the Respondent was sentenced (by a United States Magistrate Judge) to two (2) years probation, ordered to pay a penalty, make a community service payment and to implement an Environmental Compliance Plan for illegally discharging a solution of fluosilicic acid from its facility into the Mississippi River.

While failure to notify the Department within 1 hour of becoming aware of an emergency condition was not a violation in one of the aforementioned enforcement actions/cases, failure to notify the Department within seven (7) days of a change in information applicable to the Respondent's facility was one of the cited and resolved violations. For these reasons, an upward adjustment has been made for this factor.

2. The gross revenues generated by the Respondent.

Adjustment = 10%

Justification: The Respondent provided the Department with its most current gross revenues on or about September 17, 2012. The Department's review of the gross revenues revealed the Respondent had sufficient funds to comply with the notification requirement(s) and to pay a reasonable penalty. Therefore, an upward adjustment has been made for this factor.

3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.

Adjustment = 10%

Justification: The Respondent is culpable for failing to notify the Department within 1 hour of becoming aware of an emergency condition. However, indifference, recalcitrance or defiance has not been displayed by the Respondent.

4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.

Adjustment = 0%

Justification: The Department is aware that the unauthorized discharge itself has the potential to affect the environment. However, the Respondent has developed and implemented plan(s) to ascertain whether damages were caused by the unauthorized release. Thus far, community air monitoring has revealed no impacts to human health and other plan(s) have been or are being developed and implemented to ascertain impact to surface water and surrounding soil(s).

Sampling data of surface water samples obtained near the Respondent's facility revealed 1-Octene was not present in the surface water but did detect analytes for oil, diesel and petroleum related chemicals. However, the amounts detected do not currently pose a human health concern.

5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

Adjustment = 30%

Justification: The Respondent did not immediately notify the Department when the release was discovered on August 30, 2012. However, the Department is not aware that the Respondent attempted to conceal this information from the Department. An adjustment has been made for failure to immediately notify the Department.

Penalty Range for the Penalty Event (using the Violation – Specific Factors and the Penalty Matrix)	Minimum (A) <u>\$8,000.00</u> Maximum (C) <u>\$11,000.00</u>
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Sum of the Percentages for the Penalty Event (using the Violator – Specific Factors)	Sum of %s (B) <u>100%</u>
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Formula(s) to obtain a penalty amount for each Penalty event	$P = A + (B \times [C-A])$ $P = 2(A + [B \times (C-A)])^*$
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\*Note – the statutory maximum is double in circumstances where the penalty event constitutes a violation of a previous enforcement action as stated in R.S. 30:2025 (E) (2).

**Penalty Amount for Penalty Event = \$11,000.00**

#### **MONETARY BENEFIT OF NONCOMPLIANCE**

LAC 33:I.705.G

The Department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

Justification/Explanation/Calculation of Benefit of Noncompliance:

In a September 17, 2012, meeting with the Department, the Respondent provided a statement of Economic Benefit of Non-Compliance. In this correspondence, the Respondent reported that the notification(s) made to the Department of Public Safety (DPS) 24-hour hotline did not require appreciable expenditure of resources and as such, there wasn't an economic benefit for failure to notify in a timely. The Department concurs with this justification.

**Total Monetary Benefit of Noncompliance (Bn) = \$0.00**

**Total Penalty Amount for Penalty Event #1 = \$11,000.00 + 0.00 = \$11,000.00**

Final Calculation

The values for each penalty amount are added to determine a penalty subtotal (Ps).

$$P_s = P_1 + P_2 + P_3 \dots$$

$$P_s = \underline{\$11,000.00}$$

**Response Costs (Rc)** are then added to the penalty subtotal (Ps) to determine the total penalty amount (Pt).

$$R_c = \underline{\$1,189.61}$$

**Penalty Total = Penalty Subtotal + Response Costs**  
 $(P_t) = P_s + R_c$

$$\text{Penalty Total} = \underline{\$12,189.61}$$

COMPUTATION OF RESPONSE COST  
LAC 33:I.705.H

Personnel	No. of Hours (B)	Hourly Rate of Pay (C)	Direct Cost (D)	Approved Federal Rate (E)	Indirect Cost (F)	Subtotal (G)
Enforcement Division						
Enforcement Writer	6.5	\$41.50	\$269.75	60.86%	\$164.17	\$433.92
Enforcement Analyst	1	\$23.47	\$23.47	60.86%	\$14.28	\$37.75
Administrative Analyst	0.5	\$13.83	\$6.92	60.86%	\$4.21	\$11.13
Enforcement Manager	3.5	\$32.47	\$113.65	60.86%	\$69.17	\$182.82
Enforcement Attorney	1.25	\$43.70	\$54.63	60.86%	\$33.25	\$87.88
Enforcement Administrator	5	\$34.66	\$173.30	60.86%	\$105.47	\$278.77
Assistant Secretary	1.5	\$49.04	\$89.66	60.86%	\$67.68	\$157.34
Total Enforcement Costs:						\$1,189.61

**Direct Cost (D) = No. Hours (B) X Rate (C)**

**Indirect Cost (F) = Direct Cost (D) X Approved Federal Rate (E)**

**Subtotal (G) = Direct Cost (D) + Indirect Cost (F)**

Approved Federal Rate Effective = 60.86%